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Citing Workload, Public Lawyers Reject New Cases

By [ERIK ECKHOLM](#)

MIAMI — Public defenders' offices in at least seven states are refusing to take on new cases or have sued to limit them, citing overwhelming workloads that they say undermine the constitutional right to counsel for the poor.

Public defenders are notoriously overworked, and their turnover is high and their pay low. But now, in the most open revolt by public defenders in memory, many of the government-appointed lawyers say that state budget cuts and rising caseloads have pushed them to the breaking point.

In September, a Florida judge ruled that the public defenders' office in Miami-Dade County could refuse to represent many of those arrested on lesser felony charges so its lawyers could provide a better defense for other clients. Over the last three years, the average number of felony cases handled by each lawyer in a year has climbed to close to 500, from 367, officials said, and caseloads for lawyers assigned to misdemeanor cases have risen to 2,225, from 1,380.

"Right now a lot of public defenders are starting to stand up and say, 'No more: We can't ethically handle this many cases,'" said David J. Carroll, director of research for the National Legal Aid and Defender Association.

The Miami-Dade case, which is being closely watched across the country, was appealed by the state, which says that defender offices must share the burden of falling revenues. On Friday, the Florida Supreme Court sent the case to an appellate court for a ruling. If the judge's decision is upheld, it will force courts here to draw lawyers from a smaller state office and contract with private lawyers to represent defendants, at greater expense.

But such lawsuits are just the most overt sign of the burdens that lead harried lawyers in Michigan to talk openly about "McJustice" and in New York to make dark jokes about the plea bargain "assembly line."

"In my opinion, there should be hundreds of such motions or lawsuits," said Norman Lefstein, a professor at the [Indiana University](#) School of Law and an expert on criminal justice.

"I think the quality of public defense around the country is absolutely deteriorating," Mr. Lefstein said, asserting that unless states spent more on lawyers, the courts would force them to delay trials or, as has happened in a few cases, threaten to drop charges against unrepresented defendants.

The most immediate impact of the rushed justice, Mr. Lefstein and Mr. Carroll said, is that innocent defendants may feel pressure to plead guilty or may be wrongfully convicted — which means the real offenders would be left untouched. Appeals claiming inadequate defense are very difficult to win, experts say.

In a 1963 decision, *Gideon v. Wainwright*, and subsequent cases, the [United States Supreme Court](#) ruled that poor criminal defendants are entitled to government-paid representation.

Here in the 11th Judicial Circuit of Florida, the defenders' office has had its budget cut by 12.6 percent in the last two years, said the elected chief defender, Bennett H. Brummer, and the workload has climbed by 29 percent over the last four years.

State Senator Victor D. Crist, chairman of the Criminal and Civil Justice Appropriations Committee, is a vocal critic of the Miami-Dade lawsuit, saying Mr. Brummer is "blowing things out of proportion."

Mr. Crist said the judicial system had faced smaller cuts than other parts of government. Although no defendant should be denied due process, he said, the courts, state's attorneys and public defenders must all tighten their belts. He said defenders' offices could increase efficiency by, for example, more carefully choosing which cases require depositions and other time-consuming actions. He said they should impose fees on clients, even if the sums were low or payment was delayed.

Legal defense is a right, Mr. Crist said, but "quality education is a right as well, and proper policing and safety in the community and maintaining standards in our prisons."

Mr. Brummer countered: "There's a race to the bottom here. As the loads worsen, the more experienced lawyers leave. But the cases continue to come in."

This puts defenders like Arthur J. Jones, 30, on a treadmill of frustration. In his Miami office on a recent morning, Mr. Jones looked over a printout listing 155 current clients. He spent a frantic morning in court, handling arraignments and plea bargains for 23 offenders, a majority of whom he had never met before. His cases involve lesser felonies like cocaine possession, burglary and grand theft.

Mr. Jones, in between hushed conversations with clients in the hallway or the holding pen, said he wished he had more time to investigate cases and could go to trial more often, rather than accepting the police version of events and then, after a short discussion, helping his clients make a life-altering deal.

"I'd love to have time to visit the crime scene and do more legal research," Mr. Jones said.

In Missouri, the system has not added staff members in eight years, while the annual number of cases has grown by 12,000, said J. Marty Robinson, the director of the state's public defenders. "We're on the verge of collapse," he said.

Mr. Robinson appealed to an oversight commission, and beginning last month, defenders in more and more counties are declining misdemeanor cases and others that are unlikely to result in incarceration.

In Kentucky, the state public advocate, Ed Monahan, filed a lawsuit that would allow defenders to turn down cases they cannot ethically handle. "Since *Gideon*, I don't remember a time when the challenges to adequate representation have been so great," Mr. Monahan said. In Kentucky as elsewhere, though, some senior legislators say that public defenders must share the fiscal pain.

Similar lawsuits are pending, or offices have turned down clients this year, in Tennessee, Minnesota, Maryland and Arizona.

In New York City, financing from the city and state for criminal defense declined by \$2.7 million this year, from a budget of just over \$90 million. Meanwhile, the annual number of cases has climbed to 226,000, from 210,000 in 2006.

The city's [Legal Aid Society](#) is promoting a bill before the City Council that would set caps on the number of clients each lawyer could take on. But this would require a significant increase in funds at a time when both city and state face large budget shortfalls.

The hurried processing of even misdemeanor pleas can have serious consequences for the accused, noted Deborah Wright, president of the Association of Legal Aid attorneys, the union for New York defenders. Even if they get no jail time, such defendants still get a criminal conviction, which can affect [immigration](#) status and some public benefits.

Michigan requires counties to protect the indigent without providing state funds, resulting in large disparities. In some counties, those charged with misdemeanors are not even offered a lawyer; in others, the judge hires one for a flat fee, creating a conflict of interest and incentives to skimp on defense, according to a recent report by the National Legal Aid and Defender Association and the Michigan Bar Association. County and state officials acknowledge the problems, but counties say they cannot fix them without funds from a state government that is already reeling.

On the positive side, Mr. Carroll of the defender association said that Nevada, Louisiana and Montana had recently acted to shore up public defenders.

In Miami, as elsewhere, cases involving serious felony charges, potentially involving prison terms of decades or life, more often go to trial. Amy Weber, who has worked in the office for five years, handles about 50 serious felony cases at one time — too many, she said. “The stakes are a lot higher and the cases involve lots of witnesses, lots more discovery,” she said.

On one day in April, Ms. Weber had 13 cases set for trial, so she had to arrange for delays in all but one. That same day, James A. Simons, 59, who was in jail on [child pornography](#) charges, was offered a plea: one year in prison. Ms. Weber said she simply had no time to discuss the offer with him, but that he would have accepted it and ended his case.

Not receiving an immediate agreement, prosecutors gathered more evidence and rescinded the one-year offer. Mr. Simons ultimately had to accept a five-year sentence. “My client suffered and it makes me feel terrible,” Ms. Weber said. “You try to tell yourself you can only do what’s possible.”

Her colleague, Mr. Jones, left his \$44,000-a-year job on Monday for private practice, saying he could not support his children and pay off school loans on that salary. A few weeks earlier, he had to tell a 53-year-old man who was charged with grand theft, for stealing a few locks from a Home Depot, that the state was offering five years because earlier convictions made him a “habitual offender.” In a discussion in a holding pen, his client asked, “Won’t they take one year?” Mr. Jones went back to the prosecutors, who calculated that the minimum sentence, under a scoring system here, would be 2.6 years. But Mr. Jones had no time to check their math.

The man was already resigned to taking that sentence when the prosecutors discovered their calculations

were mistaken: the correct minimum was 366 days.

“You see how easily accidents can happen?” Mr. Jones said. “He easily could have gotten three years instead of one.”

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